

21 January 1994

From: Commander, Western Division, Naval Facilities Engineering Command

To: Distribution

Subj: HUNTERS POINT ANNEX MEMORANDUM OF UNDERSTANDING

Encl: (1) Memorandum of Understanding executed 21 January 1994

1. Enclosure (1) is a copy of the Memorandum of Understanding establishing the mechanism for the eventual conveyance of Hunters Point Annex to, and interim management by, the City of San Francisco. The agreement was signed this date by RADM Tedeschi, Commander, Naval Base San Francisco, and Mayor Frank Jordan, at a ceremony presided over by Congresswoman Pelosi, sponsor of the enabling legislation that led to this agreement. The Memorandum of Understanding was previously endorsed by the Acting Secretary of the Navy (Installations and Environment). The Memorandum of Understanding has to be ratified by the local legislative body, the Board of Supervisors, but that is expected to be a mere formality.

2. Key elements of the Memorandum of Understanding are as follows:

- \* Authorized by the so-called "Pelosi" and "Pryor" amendments
- \* City acquires fee title to the first 50-acre parcel, Parcel "A" for \$1 when certified clean
- \* City has right of first refusal to acquire remaining parcels for \$1 when certified clean
- \* City becomes Navy's property manager, including management of existing and future business tenants, and retains all rent income
- \* City becomes responsible for maintenance of Hunters Point infrastructure
- \* City provides police/security service
- \* City reimburses Navy for cost of (Navy) civil service fire company until they acquire Parcel "B" at which time the City assumes fire fighting responsibility for entire base
- \* City markets property for interim leases

MEMORANDUM OF UNDERSTANDING

(Hunter's Point Naval Shipyard)

THIS MEMORANDUM OF UNDERSTANDING (this "MOU") dated as of January 21, 1994, is among the DEPARTMENT OF THE NAVY OF THE UNITED STATES OF AMERICA (the "Navy"), the CITY AND COUNTY OF SAN FRANCISCO (the "City") and the REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO (the "Agency"). The City and the Agency are sometimes individually and collectively referred to below as the "City Agencies."

THIS MOU IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND UNDERSTANDINGS:

- A. The Navy is the owner in fee of all of that certain real property located in the City and County of San Francisco, State of California, commonly known as the Hunters Point Naval Shipyard or the Hunters Point Annex, consisting of approximately 500 acres of land and approximately 480 acres of submerged area, as more particularly described on Exhibit A attached hereto (the "Shipyard").
- B. The Shipyard was a center of employment from World War II until its nominal closure in 1974. It reached a peak of employment of 17,000 jobs and, at its nominal closure, employed approximately 6,000 people. The immediate environs of the Shipyard, known as the Bayview-Hunters Point Community, has experienced 20% to 30% unemployment since 1974.
- C. On July 2, 1993, the President of the United States announced a major new 5-Point Plan to speed economic recovery in communities impacted by military base closures, which includes transferring excess Federal property for free or at a discount when community development plans support economic viability and job creation.
- D. The Shipyard has been approved and selected for closure and disposition by the Base Realignment and Closure Commission of 1991, acting pursuant to Public Law 101-510, Title XXIX, Section 2901 et seq. (104 Stat. 1808 et seq.), and with the full consent of the President and the Congress. Pursuant to Public Law 103-160 (107 Stat. 1547), the Navy is duly authorized to enter into the agreements referred to in this MOU and to effect the transactions contemplated hereby.
- E. Due to the presence of Hazardous Materials (as defined below) on, in, under and about the Shipyard, the Environmental Protection Agency ("EPA") has placed the Shipyard on the National Priorities List created pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601 et seq. Pursuant to

CERCLA, the Navy, the EPA and the State of California (the "State") have executed a Federal Facilities Agreement dated on or about January 22, 1992 (the "FFA"). The FFA requires the Navy to Investigate and Remediate (as such terms are defined below) all Hazardous Materials on, in, under or about the Shipyard in accordance with a specified process and schedule.

F. To facilitate the expeditious Remediation of Hazardous Materials and timely productive re-use of the Shipyard, the Navy and the other parties to the FFA have tentatively agreed that Remediation of the Shipyard should be accomplished on a parcel by parcel basis. For such purposes, the Navy shall take those steps with respect to the FFA that the Navy deems necessary to permit the Navy to treat the Shipyard as 5 separate parcels: Parcels A, B, C, D and E as delineated on the attached Exhibit B (each such parcel is referred to below as a "Parcel").

G. Pursuant to the authorities contained in the legislative acts cited in Paragraph D above, the Navy desires to grant to the City the exclusive option to purchase the Shipyard on a Parcel by Parcel basis upon the successful Remediation of each Parcel, and the City desires to acquire the exclusive right to purchase the Shipyard at the purchase price of \$1 for each Parcel, on the terms and conditions contained in this MOU.

H. The Board of Supervisors of the City, in Resolution No. 93-306, designated the Shipyard as a Survey Area pursuant to the California Community Redevelopment Law. Pursuant to California Health and Safety Code Section 33391, the establishment of a Survey Area vests legal authority in the Agency to acquire all or any portion of the Shipyard.

I. Consistent with the requirements imposed on the Navy under Section 120(h) of CERCLA, the parties have agreed that before the City, or the Agency as the City's designee, accepts title to any Parcel of the Shipyard, the Navy shall Remediate all Hazardous Materials located on, in, under or about the Parcel in accordance with standards or goals that are measurable, clearly defined and consistent with the public health, safety and welfare and the environment, in a manner that complies with the FFA and applicable law. The parties have further agreed that the required Remediation shall have been taken if the construction and installation of an approved Remediation Plan (as defined below) has been completed and the remedy has been demonstrated to be operating properly and successfully. The carrying out of long-term pumping and treating of groundwater, or operation and maintenance, after the remedy has been demonstrated to be operating properly and successfully as provided above, may continue after the City's (or the Agency's) acceptance of title to any Parcel of the Shipyard. The Navy will Remediate Parcel A to standards that permit the safe development, occupancy and use of the Parcel for residential and related purposes and, subject

to certain limitations described below, will Remediate Parcels B, C, D and E to accommodate the applicable Land Use Plan.

J. The Navy will first Remediate Parcel A and will then proceed with the Remediation of Parcels B, C, D and E. As a result, the conveyances of the Parcels of the Shipyard pursuant to exercised purchase options will occur over time based on the Navy's progress in Remediating the Parcels.

K. Parcel A consists of approximately 50 acres and does not contain any occupied buildings. Parcels B, C, D and E consist of approximately 470 acres and contain all of the occupied buildings in the Shipyard.

L. As a condition of the conveyance of Parcel A to the City, or the Agency as the City's designee, the Navy requires that the City Agencies assume certain responsibilities for management of Parcels B, C, D and E, including contracting for security and fire service. The Agency, as the City's designee, is willing to act as the Navy's managing agent, subject to limitations. Under the management arrangement, neither the City Agencies nor the Navy shall have any obligation to one another to expend funds in excess of the revenues produced from the Property Under Management (as defined in paragraph 4(b) below) and any sums in a reserve account for management of the Property Under Management.

M. The parties have agreed that legislative jurisdiction over Parcels B, C, D and E shall not be retroceded. Only upon conveyance of title to a Parcel to the City, or the Agency as the City's designee, shall retrocession of jurisdiction over that Parcel, including responsibility for police and fire services, occur.

N. The Navy intends to achieve a number of public benefits through the transactions contemplated by this MOU. The Navy's principal objectives include: (i) rapid disposition of the Shipyard to minimize costs of operation, management and ownership; (ii) fast-track Remediation of the Shipyard in cooperation with the regulatory agencies, the City Agencies and the public, to allow for optimum re-use and economic redevelopment, while protecting human health and safety and the environment; (iii) no-cost transfer of Remediated Parcels to facilitate productive re-use of the Shipyard for the benefit of the local community as quickly as possible; (iv) assurance of as stable a business climate as practicable for the existing commercial tenants at the Shipyard and encouragement of expanded interim re-use opportunities for the local community, consistent with activities relating to Remediation and with human health and safety, the environment, and maintenance and repair needs; (v) transfer of Federal control and responsibility for public safety and facilities maintenance to the City as rapidly as possible.

O. The City Agencies intend to achieve a number of public benefits through the transactions contemplated by this MOU. The City Agencies' principal objectives include: (i) fast-track Remediation of the Shipyard to allow for optimum re-use and economic redevelopment, while protecting human health and safety and the environment; (ii) no-cost transfer of Remediated Parcels to facilitate productive re-use of the Shipyard for the benefit of the local community as quickly as possible; (iii) assurance of as stable a business climate as practicable for the existing commercial tenants and encouragement of expanded interim re-use opportunities for the local community, consistent with activities relating to Remediation and with human health and safety, the environment, and maintenance and repair needs; (iv) management of Parcels B, C, D and E of the Shipyard on a self-sustaining basis so that the revenues received by the City Agencies cover all management, maintenance and operating expenses; and (v) employment opportunities for the Bayview-Hunters Point Community.

P. The Navy, the Agency and the City are entering into this MOU to set forth their understanding of the principles upon which the Navy may Investigate, Remediate and convey Parcels A, B, C, D and E of the Shipyard to the City, or the Agency as the City's designee, and upon which the Agency shall, subject to limitations described herein, assume certain management functions for Parcels B, C, D and E during the option period upon the conveyance of Parcel A.

Q. The Navy, the Agency and the City acknowledge that none of them can enter into a final agreement, appropriate funds or otherwise perform the activities necessary to complete the grant of the option to purchase Parcels A, B, C, D or E of the Shipyard by the Navy to the City or the assumption of management responsibilities by the Agency for Parcels B, C, D and E until their respective environmental review processes have been completed and all necessary governmental approvals have been obtained. The Agency, the City and the Navy desire to specify the actions that are contemplated, and to establish a time frame for their performance to facilitate meaningful environmental review and to affirm the Agency's, the City's and the Navy's support for the endeavor.

ACCORDINGLY, the Agency, the City and the Navy, while retaining full discretion as to these actions subject to the findings generated by the environmental review processes and other public review and hearing processes, express their intent to act and cooperate as follows with respect to the conveyance of Parcels A, B, C, D and E of the Shipyard by the Navy and the assumption of management responsibilities for Parcels B, C, D and E by the Agency during the option term:

(e) "Remediate" or "Remediation" means, when used with reference to Hazardous Materials, any activities undertaken to clean up, remove, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located in, on, under or about the Shipyard or adjacent thereto or which have been, are being, or threaten to be Released into the environment.

(f) "Remediation Plan" means the Navy's written proposal or specification for permanent Remediation of a Parcel or any portion of a Parcel.

2. Division of Shipyard into Separate Parcels. In light of the tentative agreement among the Navy, EPA and the State of California to treat the Shipyard as 5 separate parcels for purposes of Investigation and Remediation of Hazardous Materials as described above, the Navy and the City Agencies propose to treat the Shipyard as 5 separate option parcels.

3. Principles of Option to Purchase Parcels A, B, C, D and E Upon Successful Remediation. It is anticipated that the conveyance of the Shipyard from the Navy to the City, or the Agency as the City's designee, will be accomplished through the use of an option to purchase (the "Option Agreement"). The Navy and the City shall negotiate the Option Agreement in accordance with the following principles:

(a) Grant of Option. Pursuant to the authorities contained in the legislative acts cited in Paragraph D of this MOU above, the Navy shall grant to the City the exclusive option to purchase Parcels A, B, C, D and E of the Shipyard on a Parcel by Parcel basis for a purchase price of \$1 per Parcel. The consideration payable to the Navy for the option to purchase the Parcels shall be \$1.

(b) Term. The term of the option to purchase each Parcel of the Shipyard shall commence upon the execution of the Option Agreement and shall expire ninety (90) days after the City reviews and approves the documentation of Remediation for such Parcel in accordance with paragraph 3(h) below. Failure by the City to purchase any particular Parcel shall not affect the option to purchase any other Parcel.

(c) Exercise of Option. To exercise the option to purchase a Parcel, the City shall give the Navy written notice of exercise at any time on or before end of the option term applicable to that Parcel. If the City exercises the option, then the Option Agreement shall become a contract for the purchase and sale of the Parcel on the terms and conditions set forth in the Option Agreement. If the City fails to exercise the option in a timely manner, then the Navy may proceed to dispose of the Parcel in accordance with applicable laws.

(d) Title. At the closing of the purchase of each Parcel the Navy shall convey to the City, or the Agency as the City's designee, fee simple title to the Parcel by a duly executed and acknowledged quitclaim deed that satisfies the requirements of Section 120(h) of CERCLA and is in form and content acceptable to the City. Title shall be subject only to such exceptions to title as the City may approve as specified in the Option Agreement. Subject to approval by the City and the process described in subparagraph (h)(i) below, appropriate conditions shall be included in the deeds to ensure that environmental investigations and remedial activities will not be disrupted at any time, and that human health and the environment will be protected by preventing the inappropriate use of the Parcel being transferred. However, there shall be no restrictions on uses with respect to Parcel A, as provided in subparagraph (h)(i) below.

The City, at its sole cost and expense, shall prepare legal descriptions for each Parcel. Such descriptions shall be reasonably acceptable to the Navy.

As evidence of the delivery of title in the condition required, the City shall obtain at its sole cost and expense an ALTA extended coverage policy of title insurance issued by a title company selected by the City. The title policy shall be in an amount requested by the City and approved by the title company and shall insure fee simple title to the Parcel in the City, or the Agency as the City's designee, free of any and all liens, interests and encumbrances except solely for the permitted title exceptions. The policy shall provide for reinsurance and include endorsements as the City may reasonably require.

(e) State Interests. The Navy shall cooperate with the City Agencies to clarify the nature and extent of the jurisdiction of any State agencies, including, but not limited to, the San Francisco Bay Conservation and Development Commission and the State Lands Commission, over any portions of the Shipyard.

(f) Assignment of Leases. At the closing, the Navy shall assign to the City (or the Agency, as the City's designee) the Navy's interest in any leases affecting the Parcel that is being conveyed. Prior to the conveyance of the Parcel and the assignment of leases, the Navy shall cooperate with the City in terminating any leases which the City may elect not to assume, provided that the Navy has the right to terminate such leases without liability.

(g) Easements. The Navy shall grant to the City (or the Agency, as the City's designee) any easements over the portion of the Shipyard remaining under the Navy's ownership

that the Navy and City determine are reasonably required for the development, use or occupancy of any Parcel purchased from the Navy, and which do not unduly conflict with the Navy's responsibility to protect human health and the environment or to conduct investigation or remediation activities. The City shall grant any rights of access for additional Remediation as found to be necessary under Section 120 of CERCLA subject to such reasonable limitations and protection for development, use and occupancy as the Navy and the City may agree.

(h) Successful Remediation of Hazardous Materials. The City shall not accept tender of a Parcel unless the Navy shall have first successfully Remediated Hazardous Materials on, in, under and about the Parcel in compliance with the FFA, the Option Agreement and the principles of this MOU.

(i) Remediation Standards.

(1) Remediation Standards for Parcel A. The Navy shall Remediate Parcel A to standards that permit the safe development, occupancy and use of the Parcel for residential uses and related purposes (including excavation for subsurface foundations, improvements and infrastructure), assuming reasonable construction techniques and building designs, and in such condition that these activities and uses will not result in any requirements under any applicable laws for the Investigation or Remediation of Hazardous Materials in the soil or groundwater, provided that the conditions of suitability for residential development, occupancy and use shall not include removal of any groundwater remediation wells or activities installed on the Parcel. The Navy and the City acknowledge that the EPA and the State of California may impose certain temporary restrictions on use of the Parcel, or specific portions of the Parcel, and limitations on excavation of certain portions of the Parcel, as a temporary buffer restriction pending Remediation on adjacent Parcels. However, as a condition to the City's obligation to purchase, Parcel A shall not be subject to any deed restrictions on use.

(2) Remediation Standards for Parcels B, C, D and E. With respect to Parcels B, C, D and E of the Shipyard, the Navy shall Remediate each of those Parcels to standards or goals that are measurable, clearly defined and consistent with the public health, safety and welfare and the environment, in a manner that complies with the FFA and applicable law and also in a manner that is consistent with



the residential development, use and occupancy of Parcel A. In designing a Remediation Plan for any such Parcel, the Navy shall take into account the then applicable Land Use Plan in accordance with the procedure described below, but the Navy shall not be bound by any such Land Use Plan. The Navy shall use its best efforts to propose a Remediation Plan that allows development of the land uses permitted on the Parcel by the Land Use Plan applicable to the Parcel at the time the Remediation Plan is proposed, unless the Navy reasonably determines that (i) the cost to the United States of America to Remediate Hazardous Materials to accommodate such Land Use Plan would be prohibitively expensive, (ii) the time it would take to achieve the necessary level of Remediation would be unreasonably long, (iii) the method of Remediation required would be technologically infeasible or (iv) the proposed Remediation Plan would fail to comply with the National Contingency Plan (NCP), 40 C.F.R. §300 et seq., or other applicable environmental laws. If the Navy determines that any of those conditions exist, then the Navy shall notify the City Agencies of the Navy's determination, including the factual information upon which such determination is made. The Navy and the City Agencies shall then meet in a good faith effort to attempt to make adjustments to the Land Use Plan, the proposed Remediation Plan, or both, with the goal of reconciling beneficial and reasonable productive re-use of the Parcel with an achievable and cost effective Remediation Plan. Upon completion of the process described above for reconciliation of the Navy's Remediation Plan with the Land Use Plan, the Navy may proceed to submit a Remediation Plan for approval and implementation pursuant to the FFA. Regardless of the outcome of the reconciliation process, the Remediation Plan shall designate the land uses that the Navy has determined appropriate for the particular Parcel, or portions of such Parcel, and for which the Remediation Plan is designed.

All Remediation required hereunder shall have been taken if the Navy has completed construction and installation of an approved Remediation Plan and has demonstrated that the remedy is operating properly and successfully. The carrying out of long-term pumping and treating of groundwater, or operation and maintenance, after the remedy has been demonstrated to be operating properly and successfully as provided above, may continue after the City's (or the Agency's,

as appropriate) acceptance of title to any Parcel of the Shipyard.

(ii) Hazardous Materials Remediation. The Navy shall diligently proceed with its Investigation and Remediation of Hazardous Materials on, in, under and about the Shipyard in accordance with the FFA and the provisions of this MOU. The Navy shall at all times keep the City Agencies apprised of the progress of its Investigation and Remediation and shall provide the City Agencies' designated representative with access, as requested, to information regarding conditions at the site as such information becomes available during the Investigation and Remediation.

(iii) Asbestos Containing Materials. Prior to transfer of a Parcel, the Navy shall remove or encapsulate all damaged and accessible friable asbestos-containing materials or asbestos-containing materials that pose a threat to human health and the environment, in accordance with applicable laws and regulations.

(iv) Documentation of Remediation. As evidence that the Navy has Remediated Hazardous Materials on, in, under and about the Parcel in accordance with the terms hereof, the Navy shall provide the City Agencies with a written certification or other appropriate documentation ("certification") from all of the parties to the FFA that the Remediation has been successfully completed in accordance with the FFA and the provisions of this MOU. The form and content of the certification shall be reasonably acceptable to the City Agencies.

In addition to receiving such certification from the parties to the FFA, the City Agencies shall have the right, before agreeing to accept title to a Parcel, to conduct a commercially reasonable review of the environmental condition of the Parcel in light of the certification and the then applicable Land Use Plan. Such review may be based on the City Agencies' independent investigation using consultants of its own choosing. To facilitate the City Agencies' meaningful independent investigation of the environmental condition of a Parcel, the Navy shall provide the City Agencies' designated representatives access to its administrative record files and all documents developed as the basis for the Navy's remedial action selection decision. Such review and approval period shall not exceed 180 days after receipt of the certification required hereby, subject to mutually agreeable extensions and unavoidable delays.

(v) Appropriations. The Agency, the City and the Navy expect that the Navy's obligations arising under the FFA will be fully funded. The Navy agrees to seek sufficient funding through the Department of Defense budgetary process to fulfill such obligations. However, the Agency, the City and the Navy recognize that any obligations of the Navy to Investigate and Remediate any Parcel of the Shipyard are subject to the appropriation of necessary funds by the Congress of the United States of America. No provision of this MOU shall be interpreted to require an obligation or payment of funds by the Navy in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341.

(i) Tenant Estoppel Certificates. The Navy shall obtain and deliver to the City (or the Agency as the City's designee), before the closing date, tenant estoppel certificates from any and all tenants occupying any portion of the Parcel to be conveyed. Such certificates shall be in a form approved by the City and the Navy and shall be dated no earlier than a reasonable period prior to the closing date.

(j) Closing. The purchase and sale of each Parcel shall be consummated through escrow with a title company selected by the City and shall close (i.e. delivery of the deed and payment of the purchase price) on the last business day of the first month succeeding the month in which the option is exercised, subject to the City's right to delay the closing for satisfaction of conditions to purchase.

(k) Closing Costs. The City shall pay at the closing any and all title insurance premiums, survey costs and escrow costs.

(l) Delivery of Documents; Cooperation. The Navy has delivered to the City Agencies true, accurate and complete copies of (i) all existing and pending leases, (ii) tenant correspondence files, and (iii) a current rent roll for the Shipyard, prepared by the Navy and listing for each tenant the name, location of leased premises, rent, obligation for reimbursement of expenses, amount of security deposit and rent paid more than 30 days in advance, lease commencement date, lease termination date, lease expansion or extension options, option rent, and cost of living or other rent escalation clauses, any free rent, operating expense abatements or other unexpired concessions, and a description of any uncured defaults. In addition, the Navy has furnished the City Agencies with copies of any surveys, soils and geological reports, reports, studies, assessments test results and other documents relating to the physical, structural or environmental condition of the Shipyard, including buildings and other improvements and any and all

other documents of material significance to the ownership, use, management or operation of any Parcel. The Navy shall prepare and furnish to the City Agencies on or before the date for exercise of the option to purchase Parcel A, a copy of a health and safety survey of asbestos containing building materials the buildings and other improvements on all of the Parcels of the Shipyard. The Navy shall furnish to the City Agencies any other documents available to the Navy that the City Agencies may reasonably request. During the MOU period, the Navy shall cooperate with the City Agencies in providing information about title, physical condition and other matters relating to the ownership, maintenance, operation and use of the Shipyard.

(m) Post-Closing Rights and Obligations. After the closing of the transfer of title to any Parcel, the Navy shall have no further rights or obligations with respect to the Parcel except for the Navy's obligations under the FFA and applicable laws with respect to Hazardous Materials and except as otherwise provided in the deed, this MOU or applicable law. Except as provided in the deed, subject to the limitations contained in this MOU, the Navy shall not retain any right to approve or otherwise restrict in any manner any land use on any portion of the Parcel following the transfer of title to the Parcel. In addition, upon such conveyance, the City and its successors and assigns may freely lease, sell, assign or otherwise transfer all or any portion of the Parcel, and the Navy shall waive any claim to participate in the net proceeds from such transfer.

(n) Memorandum of Agreement. Upon execution of the Option Agreement, a memorandum of the Option Agreement shall be recorded in the Official Records of the City.

4. Principles of Management of Parcels B, C, D and E. As a condition of the Navy's transfer of title to Parcel A as provided in paragraph 3 above, the Agency, as the City's designee, shall assume certain property management functions for Parcels B, C, D and E, subject to the limitations described herein, during the option term in accordance with a management agreement (the "Management Agreement"). The Navy and the Agency shall negotiate the Management Agreement in accordance with the following principles:

(a) Management on Behalf of Navy. All actions undertaken by the Agency in the performance of its obligations under the Management Agreement shall be performed solely on behalf of the Navy. The Navy shall authorize the Agency to exercise such powers with respect to the Property Under Management (as defined below) as may be necessary or advisable for the performance of the Agency's obligations under the Management Agreement. In accordance with the budget process described in subparagraph (c)(viii) below,

the Agency and the Navy intend to operate the Property Under Management on a self-sustaining basis. The Agency shall have no obligation to make any expenditure in excess of the revenues received from the Property Under Management except to the extent that funds therefor are available from the reserve account for management (referred to in subparagraph 3(iii) below) or the Navy otherwise makes such funds available, provided that the Navy shall have no obligation to provide any such additional funds.

(b) Property Under Management. The property under management (the "Property Under Management") shall include all of Parcels B, C, D and E, except as provided in paragraph 4(e) below. Prior to the commencement of the term of the Management Agreement, the Navy shall, at its expense and subject to availability of funds (which funds the Navy shall use its best efforts to secure), install fencing to prevent unauthorized access to those portions of Parcels B, C, D and E that the Agency determines to exclude from the Property Under Management as provided above. Notwithstanding anything to the contrary herein, all sums paid by MARAD for its use of a portion of the Shipyard shall be made available to the Agency for management of the Property Under Management.

(c) Responsibilities of Managing Agent. Subject to the limitations described in this paragraph 4, the duties of the Agency as the Navy's managing agent shall consist of the following:

(i) Contract for Security and Fire Services. Except as provided in this subparagraph below, the Agency shall be responsible for contracting, on behalf of the Navy, for security and fire suppression services to the Property Under Management during the term of the Management Agreement, in accordance with an operating and capital budget for the Property Under Management approved by the Navy. Following commencement of the Management Agreement term, the Navy will continue to provide fire protection for Parcels B, C, D and E until Parcel B is successfully Remediated as provided in paragraph 3(h) of this MOU. The actual out-of-pocket costs for the Navy's provision of fire protection during such period shall be paid from the revenues received from Parcels B, C, D and E.

(ii) Perform Routine Maintenance of Infrastructure. The Agency shall be responsible for routine maintenance of streets and sidewalks and for sewer and water pipelines to the occupied buildings in accordance with an operating and capital budget for the Property Under Management approved by the Navy.

(iii) Collect Rents. The Agency shall collect rents and other monies payable by occupants of Parcels B, C, D and E during the management term. All revenues received from the use or occupancy of those Parcels shall be used for management of the property under management. The Agency shall deposit any revenues in excess of management costs in a bank account (the "reserve account") used exclusively for management of Parcels B, C, D and E, including the cost of improving usable buildings and demolishing unusable buildings. Withdrawals from that account may be made upon the signature of the Agency for disbursement for expenditures consistent with the approved budget or any other expenses of the Property Under Management approved by the Navy.

(iv) Perform Routine Maintenance and Repair of Buildings. The Agency shall be responsible for routine maintenance and repair of occupied buildings in accordance with an operating and capital budget for the Property Under Management approved by the Navy or as otherwise approved by the Navy.

(v) Service Leases. The Agency shall respond to complaints and requests by the building occupants. The Agency shall employ on-site personnel necessary for the operation and maintenance of the Property Under Management, if provided for in the approved budget.

(vi) Market Vacant and Occupiable Space. In accordance with an approved leasing plan and subject to approval, when required, by the regulatory agencies under the FFA, the Agency shall procure tenants and propose and negotiate leases or other use or occupancy agreements for the Property Under Management. The Navy and the Agency shall approve the lease form to be used for new leases. All leases for the Property Under Management shall be in the name of and executed by the Navy. The Agency shall cooperate with the Navy in the Navy's preparation of an environmental baseline survey for Hazardous Materials for each qualifying leasing action, pursuant to applicable Department of Defense requirements. The Navy shall be responsible for setting rents for the Property Under Management. In connection with the budget approval process described below, the Navy, after consultation with the Agency, may exercise any right to terminate any lease or other occupancy agreement or modify the financial terms of any such lease or other agreement.

(vii) Contract for Utilities. The Agency may negotiate and enter into contracts for gas, electricity, water and other utilities or building

operation and maintenance services, subject to the Navy's approval.

(viii) Prepare Operating and Capital Budget. The Agency shall prepare and submit to the Navy in advance a proposed operating and capital budget for the operation of the Property Under Management for each fiscal year. The Agency shall if possible propose a budget in which anticipated revenues do not exceed anticipated expenses. The Navy shall review and approve the proposed annual budget promptly following receipt. In approving the budget, the Navy shall give priority to provisions for life safety. To the extent the Agency from time to time during the course of any fiscal year believes modifications to the annual budget should be made, the Agency shall submit such modifications to the Navy. The Navy shall promptly review and approve such modifications. If the Navy disapproves any such modifications, the Navy shall give its reasons therefor and shall meet with the Agency in a good faith attempt to resolve differences, provided that the Navy shall have no obligation under the Management Agreement to make any expenditures in excess of the total revenues and any monies in the reserve account. The Agency shall be authorized to make all expenditures and take all actions necessary to implement the approved annual budget.

(ix) Prepare Leasing Plan. The Agency shall prepare and submit to the Navy in advance a proposed leasing program for the Property Under Management for each fiscal year. The Navy agrees that such leasing plan may permit a percentage of the property under management to be leased to community based non-profit organizations and for-profit businesses. Subject to the foregoing, the Navy shall review and approve such leasing program. To the extent the Agency, from time to time during the course of any calendar year, believes modifications to the leasing program should be made, the Agency shall submit such modifications to the Navy. The Navy shall promptly review and approve such modifications. If the Navy disapproves any such modifications, the Navy shall give its reasons therefor and shall meet with the Agency in a good faith attempt to resolve differences provided that the Navy shall have no obligation under the Management Agreement to consent to any modifications which would require the Navy to make any expenditures in excess of the total revenues produced by the Property Under Management and any monies in the reserve account for management. The Agency shall be authorized to make all expenditures and take all actions necessary to implement the approved leasing program.

(d) Relocation. As part of the approved leasing plan, the Agency may relocate building occupants within the property under management to more appropriate facilities, and the Agency may also relocate building occupants onto the Property Under Management from any other Parcel of the Shipyard owned or controlled by the Agency.

(e) Building 813. Building 813 is presently occupied by the Navy's Supervisor of Shipbuilding, Conversion and Repair (SUPSHIP) and Planning, Engineering, Repair and Alterations Detachment (PERA). The Navy may continue to occupy Building 813 for such purposes until the earlier of two years after the date hereof or the date upon which the Navy relocates SUPSHIP operations off of the Shipyard and terminates PERA operations at the Shipyard. However, Building 813 shall be excluded from the Property Under Management during the period of such occupancy by SUPSHIP or PERA. In addition, the Agency reserves the right to exclude from the Property Under Management any other portions of the Shipyard that become occupied by the Navy or other Federal operations, for the period of occupancy by the Navy or such other Federal operations. Notwithstanding the foregoing, the Agency shall furnish reasonable security and fire service to governmental contractors engaged in the Remediation of Hazardous Materials in the Shipyard. The parties understand that any utilities or other costs associated with the operation of any portion of the Shipyard excluded from the Property Under Management shall not be part of the operating and capital budget for the Property Under Management.

(f) Term. The term of the Management Agreement shall be coterminous with the term of the Option Agreement with respect to each of Parcels B, C, D and E. Upon the transfer of any such Parcel by the Navy to the City (or the Agency as the City's designee), any of their assignees, the Management Agreement shall automatically terminate with respect to such Parcel. The conveyance of Parcel A to the City, or the Agency as the City's designee, shall be a condition precedent to the effectiveness of the Management Agreement.

(g) Annual Performance Review. The Navy shall annually review the Agency's performance as manager. The Navy shall also provide regular monitoring of the Agency's management of the Shipyard and shall notify the Agency of any management concerns.

(h) Operating Policies. The Navy shall establish operating policies for the property under management to guide the Agency in its management activities and the occupants of the property in their uses.



(i) Books and Records. The Navy shall continue to maintain all property files and shall make such files available to the City Agencies.

(j) No-Cost Transfer of Personal Property. Upon request and subject to applicable federal law, the Navy shall transfer to the City, or the Agency as the City's designee, at no cost, any or all fire trucks and other equipment and personal property owned by the Navy located on or used in connection with the ownership, use, management or operation of the Property Under Management.

(k) Defaults. In the event the Agency fails to perform a material obligation under the Management Agreement after the expiration of any agreed-upon cure period, and the Navy terminates the Management Agreement as a result thereof, the Navy shall have the right, at its election, to terminate the Option Agreement. Upon any such termination by the Navy, the Navy may elect to terminate any further rights by the City under the Option Agreement to acquire any Parcels remaining subject thereto. In the event the Navy fails to perform a material obligation under the Management Agreement after the expiration of any agreed-upon cure period, or to comply with its obligations under the FFA to Investigate and Remediate all Hazardous Materials on, in, under or about any such Parcel as determined by final resolution of a dispute pursuant to the dispute resolution procedures in the FFA, the Agency shall have the right, at its election, to terminate the Option Agreement. No such termination by the Agency shall affect any of the rights or obligations of the parties under the Option Agreement.

(l) Litigation. In the event that any third party initiates any action or proceeding against either or both of the City Agencies arising out of any activities performed under the Management Agreement or otherwise relating to any of the Property Under Management, and the Navy is not named as a defendant in such action or proceeding, the Navy shall consent to be joined in such action or proceeding as permitted by law.

(m) Termination Right. The City Agencies are willing to agree to the Agency's assumption of management responsibilities only if the revenues from operation of the Property Under Management are sufficient to cover the costs of adequate liability insurance. Subject to the provisions of paragraph 4(c)(viii) of this MOU, the Agency shall have the right to terminate the Management Agreement if at any time the revenues from the Property Under Management are insufficient to allow the Agency to properly perform its management responsibilities and cover the costs of: (i) obtaining comprehensive liability insurance coverage with limits not less than \$25,000,000 each occurrence combined

single limit for bodily injury, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability, personal injury, products and completed operations, and a deductible of not more than \$50,000; and (ii) paying at least \$100,000 per year into a reserve account to cover claims against the City Agencies, until the balance in such reserve account reaches an amount acceptable to the City Agencies. Upon any such termination by the Agency, the Navy may elect to terminate any further rights by the City under the Option Agreement to acquire any Parcels remaining subject thereto.

(n) Reserve Accounts. In the event the Management Agreement terminates, the liability reserve account referred to in subparagraph (m) immediately above shall be preserved for a period of 2 years after the date of termination to cover any potential claims against the City Agencies arising out of the Management Agreement or the Property Under Management. After the end of such 2-year period, the Navy shall be vested with the exclusive right to any positive balance remaining in the account, provided that the Navy shall retain in such account for the benefit of the City Agencies an amount sufficient to cover any then pending claims against the City Agencies. If upon termination of the Management Agreement the balance of the insurance reserve account is not sufficient to cover potential claims against the City Agencies, then the Navy shall retain in the reserve account for management referred to in paragraph 4(c)(iii) above a reasonable amount to cover such claims for a period of 2 years after the date of termination. After the end of such 2-year period, the Navy shall be vested with the exclusive right to any positive balance remaining in the operating and capital account, provided that the Navy shall retain in such account for the benefit of the City Agencies an amount sufficient to cover any then pending claims against the City Agencies, to the extent that the amount retained in the insurance reserve account is insufficient.

(o) Leases. The leases with occupants of the Property Under Management shall include such indemnification, insurance, release, consent to jurisdiction and other provisions as the Agency deems necessary or appropriate in light of the Agency's obligations under the Management Agreement.

(p) Estoppel Certificates and Other Documents. Prior to the Agency's assumption of management of such tenants, the Navy shall furnish the Agency with tenant estoppel certificates from all tenants occupying any portion of the Property Under Management. Such certificates shall be in a form approved by the Agency and the Navy and shall be dated no earlier than a reasonable period prior to the date of assumption of management responsibilities. In addition,

prior to the Agency's assumption of management responsibilities, the Navy shall provide to the Agency the asbestos survey described in paragraph 3(1) above.

(q) Investigation and Remediation of Hazardous Materials. The Navy shall remain solely responsible for the Investigation and Remediation of any Hazardous Materials in, on, under or about the Property Under Management pursuant to the FFA and its obligations under applicable laws.

(r) Non-Discrimination and Affirmative Action. The Agency shall provide assurances with respect to non-discrimination and affirmative action pursuant to then applicable laws.

(s) Streamlined Approvals. In order to facilitate operation of the Shipyard and rapid productive reuse, the Navy shall support efforts to delegate authority and provide for streamlined, local approvals with respect to new leases and all other acts requiring Navy approval under the Management Agreement.

(t) Subcontracts. The Agency may subcontract any of its management responsibilities under the Management Agreement to any person or entity qualified to perform such responsibilities.

5. Hazardous Materials Indemnification. Current Department of Defense policy requires that the City Agencies waive all rights they have to indemnification under the indemnification provisions contained in Section 330 of the National Defense Authorization Act, 1933, P.L. 102-484 and agree that they will seek no remedy from the United States of America under authority of this statutory indemnification provision, or otherwise. However, the City Agencies are not willing to proceed with the transactions contemplated by this MOU without an indemnification agreement of the United States of America and are not willing to waive rights the City Agencies believe they are entitled to under current law for toxic tort and other environmental liabilities. Based on appropriate clarification of applicable law or changes in Department of Defense policy, a resolution of such differences must be reached before the Navy and the City Agencies will enter into the Option Agreement and the Management Agreement.

6. Retrocession. Subject to the principles outlined in this MOU, the City agrees that it will cooperate with the Navy in proceedings before the State Lands Commission to effect retrocession of all legislative jurisdiction over a Parcel effective upon the Navy's transfer of title to such Parcel pursuant to the Option Agreement. No retrocession shall occur with respect to any of the Parcels of the Shipyard unless and until title to a Parcel is conveyed to the City (or the Agency as the City's designee) pursuant to the Option Agreement and then retrocession shall occur only with respect to the Parcel

conveyed. After retrocession of a Parcel, the City shall have sole responsibility for providing police and fire protection for such Parcel.

## 7. General Provisions

(a) Redevelopment Project Area. Nothing in this MOU suggests that the City has determined at this time to proceed to establish a redevelopment project area for the Shipyard, or any portion thereof. The City shall have the right to act to establish a redevelopment project area for some or all of the Parcels, or portions thereof, subject to approval by the City's Board of Supervisors and Mayor and by the Agency's Commission, in their respective sole discretion, in accordance with all applicable laws.

(b) Assignment. Certain or all of the actions to be undertaken by the Agency or the City pursuant to this MOU and certain or all of the rights or obligations of the City to purchase Parcels A, B, C, D and E or of the Agency to manage Parcels B, C, D and E during the option period may be performed by the City or the Agency, or both, as they may designate, and may be freely assigned to other state or local entities, or any joint powers authority created by the City and other state or local entities.

(c) Local Job Development. To the extent allowed by applicable law, the Navy shall assist in the creation of job training programs for the Investigation and Remediation of Hazardous Materials on, in, under or about the Shipyard and shall give a preference to locally owned and minority and woman owned businesses employing local residents. As an example, consistent with current federal law, the Navy will cooperate with the local community in any effort to have the area designated as a high unemployment area for which federal loan assistance programs are available in providing services under federal contracts. As a further example, consistent with federal law, the Navy will construct requests for proposals to include an evaluation of the prospective service provider's plans to employ local residents. However, the Navy is not currently aware of any means afforded by existing law to provide a hiring preference to local businesses. With respect to leases of Parcels B, C, D and E, the Navy and the Agency shall encourage leasing space to minority owned, woman owned and local businesses, in a manner consistent with applicable laws.

(d) Community Involvement. The City Agencies shall work with the Bayview-Hunters Point Community and others to facilitate input on planning and re-use decisions, and the Navy will cooperate reasonably with that endeavor.

(e) Notices. The Agency, the City and the Navy shall each designate one person as the representative of each in all dealings with the other party, who shall, until further notice, be the person whose name is indicated beneath such party's address set forth on the signature page hereof. Any notice or communication hereunder must be in writing, and may be given by registered or certified mail, and if given by registered or certified mail, same shall be deemed to have been given and received when a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail; and if given otherwise than by registered mail, it shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such notices or communications shall be given to the parties hereto at the addresses set forth opposite the names of the respective parties on the signature page of this MOU. Any party hereto may at any time by giving ten (10) days' written notice to the other party hereto designate any other address in substitution of the foregoing address to which such notice or communication shall be given.

8. Signatures. The signatures below acknowledge that the Agency, the City and the Navy have agreed to the terms of this MOU; however, this MOU is not intended to be, and shall not become, contractually binding on the City Agencies or the Navy and no legal obligation shall exist unless and until the City Agencies and the Navy have negotiated, executed and delivered a mutually acceptable Option Agreement and Management Agreement, the parties' respective environmental review processes have been completed and all necessary governmental approvals have been obtained (including, without limitation, approval by City's Board of Supervisors). In conducting their respective environmental reviews, the City Agencies and the Navy shall retain the absolute discretion to (a) make such modifications deemed necessary to mitigate significant environmental impacts, (b) select other feasible alternatives to avoid such impacts, (c) balance the benefits against unavoidable significant impacts prior to taking final action if such significant impacts cannot otherwise be avoided, or (d) determine not to proceed with the project based

FINAL DRAFT

on the information generated by the environmental review process.

AGENCY: REDEVELOPMENT AGENCY OF THE CITY AND  
COUNTY OF SAN FRANCISCO

By Richard Kono  
Acting Executive Director

Designated Representative:

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\_\_\_\_\_

CITY: CITY AND COUNTY OF SAN FRANCISCO

Frank M. Jordan  
FRANK M. JORDAN  
Mayor

Designated Representative:

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\_\_\_\_\_  
\_\_\_\_\_

NAVY: DEPARTMENT OF THE NAVY OF THE UNITED  
STATES OF AMERICA

By: Ernest F. Tedeschi  
ERNEST F. TEDESCHI, RADM, USN  
Commander Naval Base San Francisco

Designated Representative:  
Director  
Real Estate Division (Code 24)  
Western Division  
Naval Facilities Engineering Command